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"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes- of this Act, Subject to such conditions as the Government shall, on the recommendations of the Council, by Notification specify.

3.2. Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of section 6 of the respective State GST Acts respective State Tax officers and the Central Tax officers respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

3.3 The confusion seems to be arising from the fact that, the said sub-section provides for notification by the Government if such cross empowerment is to be subjected to conditions. It means that notification would be required only if any conditions are to be imposed. For example, Notification No. 39/2017-CT dated 13.10.2017 restricts powers of the State Tax officers for the purposes of refund and they have been specified as the proper officers only under section 54 and 55 of the CGST Act and not under rule 96 of the CGST Rules, 2017 (IGST Refund on exports). If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purpose of the CGST Act and SGST Acts.

4. Further, it may kindly be noted that a notification under section 6(1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence or any such conditions, the power of Cross- empowerment under section 6(1) of the CGST Act is absolute and not conditional.

Yours faithfully,

(Sumit Bhatia)

Deputy Commissioner (GST)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE / DEPARTMENT OF REVENUE

CENTRAL BOARD OF EXCISE & CUSTOMS

NORTH BLOCK, NEW DELHI-110001

Tele : +91-11-23094828 Fax : +91-11-23092512

Dated: 5th October, 2018

D.O. F. No. CBEC/20/43/01/2017-GST (Pt.)

Dear Colleague,

It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.

2. In this regard, GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:-

"viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain"

3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.

5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

6. It is also informed that GSTN is already making changes in the IT system in this regard.

With best Wishes,

Yours Sincerely,

(Mahender Sing)

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[3379]

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
WEDNESDAY, THE THIRTY FIRST DAY OF JANUARY TWO THOUSAND AND
TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
and
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

IA No. 1 OF 2024
IN
WP NO: 2302 OF 2024

Between:

M/s.Ushodaya Super Markets Private Limited, (Formerly M/s.Ushodaya Super Market), Ground Floor, Pakala Towers, H.No.1-18-6/3 and 4, MIG-B3 and 4, A.S.Rao Nagar, Hyderabad, Ranga Reddy District, State of Telangana. Rep. by its Director Mr.Mannava Yugandhar

...Petitioner
(Petitioner in WP 2302 OF 2024
on the file of High Court)

AND

1. The Assistant Commissioner of State Tax, Keesara-1 Circle, Malkajgiri Division, Hyderabad.
2. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad
(2nd Respondent is not necessary party)

...Respondents
(Respondents-in-do-)

Counsel for the Petitioner
Counsel for the Respondents

:SRI SHAIK JEELANI BASHA
:SRI BHASKAR REDDY, AGP

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Proceedings, dated 30.12.2023 passed by the 1st Respondent for the tax period April, 2017 to March, 2018 under the State Goods and Service Tax Act 2017, Central Goods and Service Tax Act 2017 and Integrated Tax Act 2017, pending disposal of the WP No. 2302 of 2024, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

This application is filed seeking suspension of the operation of the proceedings, dated 30.12.2023 passed by the 1st respondent for the tax period

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April, 2017 to March, 2018 under the State Goods and Services Tax Act, 2017 and Integrated Tax Act 2017.

Considering the document dated 01.07.2023 passed by the Assistant Commissioner, whereby the authority makes the following observation while dropping the earlier show cause notice initiated on 12.11.2021. For ready reference, the observations are reproduced hereunder:

With reference to the above referred show cause notice issued to you for representing your case against the reasons stated in the Annexure attached thereto and on the basis of information available on record, the proceedings are hereby dropped for the reasons and other details stated in the Annexure attached herewith.

There does not seem to be any order passed by the authority concerned recalling the order dated 01.07.2023, nor is there any document to show that the order dated 01.07.2023 has been held to be bad by any of the superior authorities in the Department.

Prima facie, a strong case has been made out for granting interim relief. Accordingly, there shall be stay of effect and operation of the order dated 30.12.2023 till the next date of hearing.

SD/- A.V.S.PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner of State Tax, Keesara-1 Circle, Malkajgiri Division, Hyderabad.
2. The Principal Secretary, Revenue (CT) Department, State of Telangana Telangana Secretariat, Hyderabad. (1 & 2 By RPAD)
3. One CC to SRI. SHAIK JEELANI BASHA Advocate [OPUC]
4. Two CCs to GP FOR COMMERCIAL TAXES, High Court at Hyderabad. [OUT]
5. Two spare copies

Notification - GST - Central GST (CGST)

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION NO. 09/2023 – CENTRAL TAX

New Delhi, the 31st March, 2023

S.O.1564(E).— In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:—

- ** (i) for the financial year 2017-18, up to the 31st day of December, 2023;
- ** (ii) for the financial year 2018-19, up to the 31st day of March, 2024;
- ** (iii) for the financial year 2019-20, up to the 30th day of June, 2024.

[F. No. CBIC-20013/1/2023-GST]

ALOK KUMAR, Director

*See Notification No. 09/2023 – Central Tax dated 31.03.2023 for extended time limit for issuance of order under sub-section (9) of section 73, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised.

**See Notification No. 56/2023-Central Tax dated 28.12.2023 for extended time limit for issuance of order under sub-section (9) of section 73, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised.

Notification - GST - Central GST (CGST)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION NO. 13/2022-Central Tax

New Delhi, the 5th July, 2022

G.S.R. 516(E).- In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

**** (i)** extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

**** (ii)** excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund;

**** (iii)** excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

[F. No. CBIC-20001/2/2022-GST]

RAJEEV RANJAN, Under Secy.

* See Notification No. 09/2023 – Central Tax dated 31.03.2023 for extended time limit for issuance of order under sub-section (9) of section 73, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised.

** See Notification No. 56/2023-Central Tax dated 28.12.2023 for extended time limit for issuance of order under sub-section (9) of section 73, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised.

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(2023) 13 Centax 60 (A.P.) [10-11-2023]

(2023) 13 Centax 60 (A.P.)

IN THE HIGH COURT OF JUDICATURE FOR ANDHRA PRADESH AT HYDERABAD

RAVI NATH TILHARI AND A.V. RAVINDRA BABU, JJ.

SRK ENTERPRISES

Versus

ASSISTANT COMMISSIONER (ST)

Writ Petition No. 29397 of 2023, decided on 10-11-2023

GST : Where order is unsigned, it is no order in eyes of law and could not be covered under any mistake, defect or omission therein as used in Section 160 of the CGST Act 2017.

Assessment proceeding - Unsigned Order - Service of Notice - Mistake - Omission - Assessee had challenged impugned order on grounds it was unsigned and that ground on which it was passed was different from one mentioned in show cause notice - Revenue authority contended that order was valid because it was uploaded to common portal, which could only be done by competent authority - HELD : Order was invalid because it was unsigned - Unsigned order could not be covered under any mistake, defect or omission therein as used in Section 160 of CGST Act, 2017 - Section 169 of CGST Act 2017, which deals with service of orders, does not apply because issue in this case was not service of order but of signature and validity of order itself - Petition was to be allowed on ground that order does not contain signatures - Impugned order was to be set aside with direction was given revenue authority to pass fresh order in accordance with law - Section 160 read with section 169 of Central Goods and Services Tax, Act 2017/ Andhra Pradesh Goods and Services Tax Act, 2017. [Paras 7, 8 and 13]

Partly in favour of assessee/Matter remanded.

CASE REVIEW

A. V. Bhanoji Row vs. Assistant Commissioner (ST) in W.P.No.2830 of 2023 (Para 9) followed

REPRESENTED BY : Sri Karthik Ramana Puttamreddy for the Petitioner.

Sri T.C.D. Sekhar for the Respondent.

Judgment per : Sri Ravi Nath Tilhari, J.J. - Heard Sri Karthik Ramana Puttamreddy, learned counsel for the petitioner and Sri T. C. D. Sekhar, learned Government Pleader for Commercial Tax for the respondent Nos.1 and 2.

2. With the consent of the parties counsels, the petition is being decided finally at this stage.

3. While challenging the impugned order dated 28-3-2023 passed under section 73(9) of the APGST/CGST Act, 2017 passed by the Assistant Commissioner (ST), Bheemili, Visakhapatnam, I Division, learned counsel for the petitioner raised two grounds.

(1) that the impugned order is unsigned and is no order in the eyes of law which cannot be enforced.

(2) that the order has been passed on the ground that upon verification of the bank statement of the tax payer, it was found that they received payment of Rs. 93,62,630/- from the Andhra Pradesh Mineral Development Corporation Limited in the Financial Year 2020-21, which was not reflected in their GSRTTR - 3B

return, but in the show cause notice dated 31-1-2023, the said ground was not mentioned. In his submission, the show cause notice is on one ground and the order has been passed on different ground. The petitioner had no opportunity of reply, to the ground on which the order has been passed resulting into violation of the principles of natural justice.

4. Sri T. C. D. Sekhar, learned Government Pleader on the basis of instructions received, pursuant to our oral order, submits that the impugned order has not been signed as on today. But, he submits that the said order was uploaded and the uploading could be done only by the Authority competent to pass the order. He has placed reliance in Section 160 of the Central Goods and Services Tax Act, 2017 (in short, the CGST Act) to contend that no assessment, re-assessment, initiated in pursuance of any of the provisions of the GST Act, shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, etc are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any existing law. He has also placed reliance in Section 169 of CGST Act 2017, which relates to the service of notice in certain circumstances.

5. Section 160 of the Central Goods and Services Tax Act, 2017 reads as under:-

"Section 160:- Assessment proceedings, etc., not to be invalid on certain grounds:—

- (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.
- (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."

6. Section 169 of the Central Goods and Services Tax Act, 2017 reads as under:—

"Section 169:- Service of notice in certain circumstances:-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) by making it available on the common portal; or
- (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

7. On consideration of the submissions advanced and the legal provisions, we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under "any mistake, defect or omission therein" as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter i.e. validity of the order.

8. We are of the further view that Section 169 of CGST Act 2017 is also not attracted. Here, the question is of not signing the order and not of its service or mode of service.

9. In the case of *A. V. Bhanaji Row v. Assistant Commissioner (ST)* in W.P.No.2830 of 2023 decided on 14-2-2023, upon which reliance has been placed by learned counsel for the petitioner (Ex.P6), a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue.

10. Paragraph 6 of *A. V. Bhanaji Row (supra)* is reproduced as under:-

"6. A reading of Section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, Summons, Notice or other communication in the common portal. In the guise of the same, the signatures cannot be dispensed with. In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action."

11. The writ petition deserves to be allowed on the first ground itself.

12. Consequently, we are not entering into the merits of the second ground, leaving it open to the concerned authority to consider, if the ground as in the impugned order, is different than the one contained in the show cause notice, and if it is so, it shall be open for the Authority to issue fresh notice, if it is proposed to proceed on such ground. However, at this stage, learned counsel for the petitioner submits that the petitioner has submitted reply to the show cause notice dated 31-1-2023 and he shall also file additional reply, with respect to the alleged new ground as in the impugned order of his own, within a period of four (04) weeks from today.

13. Accordingly, this writ petition is allowed in part, on the ground that the order does not contain the signatures. The impugned order is *set aside* with direction to the Competent Authority to pass fresh order in accordance with law considering the petitioner's reply already filed as also the additional reply, if so filed, as submitted by the learned counsel for the petitioner within the aforesaid period with respect to the alleged new ground.

14. The entire exercise be completed preferably within a period of six (06) weeks from today.

15. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

2022 (9) TMI 1263 - BOMBAY HIGH COURT

Other Citation: [2023] 112 G S.T.R. 149 (Bom)

RAMANI SUCHIT MALUSHTTE VERSUS UNION OF INDIA AND ORS.

WRIT PETITION NO. 9331 OF 2022

Dated: - 21-9-2022

Maintainability of appeal - time limitation - petitioner's appeal came to be dismissed on the ground that appeal was not filed within a period of three months provided under Section 107(1) of The Central Goods and Services Tax Act, 2017 - the appeal was delayed more than one month provided under Sub Section 4 of Section 107 of the CGST Act - HELD THAT:- In the affidavit in reply it is not denied that the order in original dated 14th November 2019 was not digitally signed. In the affidavit in reply it is specifically stated that the show cause notice was digitally signed by the issuing authority but when it refers to the order in original dated 14th November 2019 there is total silence about any digital signature being put by the issuing authority. Conveniently, respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned order was admittedly received by petitioner electronically. However, if this stand of respondent has to be accepted, then the Rules which prescribe specifically that digital signature has to be put will be rendered redundant - unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.

The petitioner's stand is agreed upon that only on the date on which the signature of Respondent No.4 issuing authority was put on the order dated 14th November 2019 for the purpose of attestation, time to file appeal would commence - the appeal is restored to file of Respondent No.3 who shall consider the appeal on merits and pass such order as deemed fit in accordance with law.

Petition disposed off.

Judgment / Order

K.R. SHRIRAM & A.S. DOCTOR, JJ.

Mr. Ishaan Patkar a/w Ms. Chaitali Raul i/b Lilesh Sawant for Petitioner.

Ms. S.D. Vyas "B" Panel Counsel for State.

Mr. J.B. Mishra a/w Mr. Ram Ochani for Respondent Nos.3 and 4.

P.C.:

1. Petitioner is impugning an order passed on 2nd August 2021 but issued on 4th August 2021 by which petitioner's appeal came to be dismissed on the ground that appeal was not filed within a period of three months provided under Section 107(1) of The Central Goods and Services Tax Act, 2017 (the CGST Act) and in any case the appeal was delayed more than one month provided under Sub Section 4 of Section 107 of the CGST Act.

2. Section 107(1) and (4) of the CGST Act reads as under :

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

XXXXXXXXXX

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

Therefore, any person aggrieved by any decision or order passed under the Act may apply to the Appellate Authority within three months from the date on which such decision or order is communicated to such person. Rule 26(3) of the Central Goods and

Services Tax Rules, 2017 (the CGST Rules) and it is pari materia with Maharashtra Goods and Services Tax Rules, 2017 requires orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through E-signature or by any other mode of signature or verification notified in that behalf. Form GST-REG which was notified under the Rules for the purpose of passing order for cancellation of registration specifically requires the signature of the officer passing the order. Respondent has not denied that any order passed by respondent requires to be digitally signed and certified.

3. It is petitioner's case that the order in original dated 14th November 2019 which was impugned in the appeal filed before Respondent No.3 has not been digitally signed. Therefore, it was not issued in accordance with Rule 26 of the CGST Rules. Hence, the time limit for filing the appeal would begin only upon digitally signed order being made available.

4. Averments in paragraph Nos.6, 7 and 8 of the petition reads as under :

6. With respect to the issue of limitation, the order which is appealed against, which is the Order for Cancellation of Registration dated 14 November 2019, is not signed by the Respondent No.4 who has issued the order. The said order is merely uploaded on the GST Portal without any signature. The signature was affixed for the first time only on 19 May 2021 when Petitioner had to get an attestation from Respondent No.4 for the purposes of filing appeal. This attestation was required precisely because the Order for Cancellation of Registration dated 14 November 2019 was not signed.

7. Rule 26(3) of the Central Goods and Services Tax Rules, 2017 and the pari materia Maharashtra Goods and Services Tax Rules, 2017 requires orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through E-signature or by any other mode of signature or verification notified in this behalf. The Form GST-REG 15 which was notified under the Rules for the purposes of passing order for cancellation of registration specifically requires the signature of the officer passing the order.

8. Thus, the limitation period for filing the appeal against the Order for Cancellation of Registration dated 14 November 2019 never began because the Order was not signed in accordance with the rules. Alternatively, the limitation period began only from 19 May 2021 which is the date on which the signature of the Respondent No.4 was put on the order for the purposes of "attestation". The Order of Cancellation of Registration dated 14 November 2019 as well as the First Appeal Order dated 4 August 2021 are therefore liable to be quashed and set aside.

In the affidavit in reply it is not denied that the order in original dated 14th November 2019 was not digitally signed. In the affidavit in reply it is specifically stated that the show cause notice was digitally signed by the issuing authority but when it refers to the order in original dated 14th November 2019 there is total silence about any digital signature being put by the issuing authority. Conveniently, respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned order was admittedly received by petitioner electronically. However, if this stand of respondent has to be accepted, then the Rules which prescribe specifically that digital signature has to be put will be rendered redundant.

In our view, unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.

5. In the circumstances, we have to agree with petitioner's stand that only on the date on which the signature of Respondent No.4 issuing authority was put on the order dated 14th November 2019 for the purpose of attestation, time to file appeal would commence.

6. In the circumstances, we hereby quash and set aside the impugned order. The appeal is restored to file of Respondent No.3 who shall consider the appeal on merits and pass such order as deemed fit in accordance with law.

7. Before passing any order, personal hearing shall be given to petitioner with atleast seven working days advance notice. The order passed shall be a reasoned order.

8. Petition disposed.

9. We clarify that we have not made any observations on the merits of the matter.

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2022 (65) G.S.T.L. 159 (Del.)IN THE HIGH COURT OF DELHI
Rajiv Shakdher and Tara Vitasta Ganju, JJ.**RAILSYS ENGINEERS PVT. LTD.**

Versus

ADDL. COMM. OF CGST (APPEALS-II)

W.P. (C) No. 4712 of 2022, decided on 21-7-2022

GST : Extension of time period granted in view of COVID by Supreme Court in Cognizance for Extension of Limitation, In re [2020] 117 taxmann.com 66 would be applicable to both statutory time-limit for filing appeal and condonable period in this respect

GST : Show cause notice and consequential orders were required to be signed by concerned officer and same had to be affixed with digital signature if they were uploaded on GST portal

Appeal to Appellate Authority - Limitation - Condonation of delay - Appeal was filed after prescribed period of three months but within condonable period - Appeal had been rejected as time-barred - Extension of time period granted by Supreme Court in Cognizance for Extension of Limitation, In re [2020] 117 taxmann.com 66 in view of COVID-19 pandemic was applicable for both statutory time limit for filing appeal and condonable period in this respect - Impugned order being contrary to Supreme Court order, was set aside Appeal to be heard afresh - Section 107 of Central Goods and Services Tax Act, 2017. [paras 8, 8.1, 9, 9.1, 11, 11.1, 11.2, 11.3, 11.4 and 12]

Show cause notice - Signature in SCN - Contention of department was that concerned officer was not required to sign show cause notice and consequential orders when they were uploaded in GST portal as per Section 169 of Central Goods and Services Tax Act, 2017 - Contention of department was not sustainable - Relevant provision did not suggest that orders need not be signed - Digital signature on these documents should have been appended as implications of these documents were grave for assessee - Section 169 of Central Goods and Services Tax Act, 2017. [paras 10, 10.1 and 10.2]

Petition disposed of in favour of assessee**CASE CITED**

Cognizance for Extension of Limitation, In re — [2020] 117 taxmann.com 66 — Followed [Paras 3, 5.3, 6.4]

REPRESENTED BY : S/Shri Sandeep Chilana, Priyojeet Chatterjee, Ms. Shambhavi Sinha and Shekhar Sharma, Advocates, for the Petitioner.

Shri R. Ramachandran, Senior Standing Counsel, for the Respondent.

[Order per : Rajiv Shakdher, J. (Oral)]. - This writ petition is directed against the appellate order dated 28-6-2021, passed by respondent No. 1.

1.1 Besides the challenge to the aforementioned order i.e., Order-in-Appeal, challenge is also laid to the Show Cause Notice (SCN) dated 29-10-2019 and the order dated 25-11-2019 passed by the concerned authority, cancelling the petitioners' registration.

2. What is not in dispute before us is that the Order-in-Appeal passed by respondent No. 1 is founded on the ground that the appeal was instituted beyond the prescribed period of limitation.

3. Mr. Sandeep Chilana, who appears on behalf of the petitioners, has assailed the aforementioned Order-in-Appeal, the SCN and the order cancelling the registration of the petitioners, broadly, on the following grounds :

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- (i) Firstly, the limitation period stood extended by various orders passed by the Supreme Court in *Suo Motu* W.P. (C.) No. 3/2020.
- (ii) Secondly, the SCN dated 29-10-2019, on which the order cancelling the registration was premised, is an unsigned order which directed the appearance of the petitioners' authorized representative on 4-11-2019, without indicating the venue at which the proceedings would be conducted.
- (iii) Thirdly, the order cancelling registration dated 25-11-2019, suffers from the same defect as the SCN, i.e., it did not bear the signatures of the concerned authority i.e., the Superintendent, Ward 94.
- (iv) Lastly, Rule 68 of the CGST Rules, 2017 [in short "2017 Rules"] required the respondent/Revenue to issue a notice to the petitioners concerning the non-filing of returns for the period in issue, having regard to the fact that up until February, 2019, the petitioners had been regularly filing its returns.
- (v)(a) The period during which the petitioners did not file their return, spans between February, 2019 and November, 2019. Therefore, before taking recourse to the draconian powers conferred on the respondents/revenue under Rule 22 of the 2017 Rules, notice under Rule 68 ought to have been issued, concerning the infraction in not filing returns for the aforementioned period.

4. In support of his submissions, it has also been indicated that the petitioners, although remiss, initially, in filing the returns for the period spanning between February, 2019 and November, 2019, appear to have filed their returns, with late fee on 30-4-2021.

5. On the other hand, Mr. R. Ramachandran, who appears on behalf of the respondents/Revenue, submitted that the conduct of the petitioners is such that no relief should be granted to them by this Court.

5.1 In this context, Mr. Ramachandran has emphasized the fact that returns for the continuous period of six months, were not filed by the petitioners and therefore, the SCN was issued regarding the cancellation of the registration.

5.2 Mr. Ramachandran contends that the procedure, as prescribed under the 2017 Rules, was adhered to, and therefore, no fault can be found with the action taken by the respondents/Revenue of cancelling the petitioner's registration.

5.3 As regards the Order-in-Appeal, Mr. Ramachandran contends that the period of non-filing the returns being prior to COVID-19 kicking in, the orders passed by the Supreme Court in *Suo Motu* Writ Petition No. 3/2020, will not be applicable in the petitioners' case.

6. We have heard Learned Counsel for the parties at some length. According to us, the crucial dates for determining the limitation are the following :

6.1 The impugned order cancelling the registration is dated 25-11-2019. For the moment, we would assume that this order was served on the petitioners on the date when it was issued, though that is highly unlikely.

6.2 Concededly, the period of limitation prescribed for filing the appeal under Section 107 of the CGST Act, 2017 [in short "Act"] is three months, which is amenable to extension by the period of one month by the Commissioner on sufficient cause being shown. [See sub-section (4) of Section 107 of the Act.]

6.3 The prescribed period of limitation would thus, end on 24-2-2020, with a one-month leeway available to the Commissioner to extend the period of limitation. The condonable period of one month, in this instance, would end on 24-3-2020.

6.4 It is common knowledge that COVID-19 restrictions were triggered in this country in and about 23-3-2020. Therefore, what needs to be examined is: whether or not the petitioners were covered by the orders and directions issued by the Supreme Court in *Suo Motu* Writ Petition (Civil) No. 3/2020, to which, reference has been made hereinabove?

7. In this context, it may be relevant to refer to the following extracts from various orders passed by the Supreme Court:

"Order dated 23-3-2020 in Writ Petition (Civil) No. 3/2020

....To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further order/s to be passed by this Court in present proceedings."

"Order dated 8-3-2021 in Writ Petition (Civil) No. 3/2020

....The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

"Order dated 4-1-2022 in SLP (C) No. 17298/2021

....Even as held by this Court in the subsequent orders even the period of limitation which could have been extended and/or condoned by the Tribunal/Court is excluded and/or extended even up to 7-10-2021."

"Order dated 10-1-2022 Writ Petition (Civil) No. 3/2020

5. xx xx xx

(IV) It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

[Emphasis is ours.]

8. Having regard to the directions contained in the aforementioned orders, it is clear that extension of limitation applied

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even to the condonable period, and not just to the prescribed period of limitation under Section 107 of the Act.

8.1 Therefore, clearly, the impugned Order-in-Appeal dated 28-6-2021 is contrary to the directions issued by the Supreme Court, and therefore, deserves to be set aside.

9. On merits, as noted above, several assertions have been made by the petitioners, including the assertions which tantamount to stating that there has been a violation of principles of natural justice, inasmuch as the SCN did not indicate the venue or the mode by which the authorized representative of the petitioners was to be heard in defence of their case.

9.1 The reason that we advert to the mode is that, in many cases which have come up before us, recourse has been taken to video-conferencing mechanism.

10. Insofar as the other argument that, both the SCN dated 29-10-2019, as well as the order cancelling the registration dated 25-11-2019, did not bear the signatures of the officer, Mr. Ramachandran says that since these orders were to be uploaded on the common portal, signatures were not appended by the officers.

10.1 In support of his submission that signatures need not be appended by the concerned officer, Mr. Ramachandran relies upon Section 169(1)(d) of the Act. For the sake of convenience, the same is extracted hereafter :

"169. Service of notice in certain circumstances. - (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely :-

- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) by making it available on the common portal; or
- (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice."

[Emphasis is ours]

10.2 According to us, even a plain reading of the provision does not suggest that the orders need not be signed. At the least, the respondents/Revenue should have appended digital signatures on the SCN and the above-mentioned order, as it has grave implications for the assessee.

11. However, this and the other aspects, on merits, are matters on which the concerned officer will return a finding, after hearing the authorized representative of the petitioners.

11.1 Accordingly, the impugned Order-in-Appeal dated 28-6-2021 is set aside.

11.2 Consequently, the appeal preferred by the petitioners is restored.

11.3 The authorized representatives of petitioner will have the liberty to canvass their case before the concerned officer, who shall issue notice of hearing, in writing to the petitioner.

11.4 The notice will indicate the date, time, venue and the mode of hearing, i.e., whether it would be held virtually or in physical mode.

12. The writ petition is disposed of, in the aforesaid terms.



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2006 (201) E.L.T. 517 (S.C.)

IN THE SUPREME COURT OF INDIA

**Ashok Bhan and Markandey Katju, JJ.
DUNCANS INDUSTRIES LTD.***Versus***COMMISSIONER OF C. EX., NEW DELHI***Civil Appeal No. 754 of 2001 with C.A. Nos. 4075-4076 of 2001, decided on 22-8-2006*

Demand - Deletion of duty demand - Dues for entire period of dispute settled under Kar Vivad Samadhan Scheme, 1998 - After grant of certificate under Kar Vivad Samadhan Scheme, 1998 as having settled the dispute and payment of amount determined no further proceedings could be initiated or proceeded by any authority under the Act - Tribunal's order of deletion of duty demand of Rs. 17,65,13,315/- raised in show cause notice, affirmed - Section 11A of Central Excise Act, 1944. [paras 24, 26, 29]

Penalty - Matter settled in Kar Vivad Samadhan Scheme, 1998 - No allegation much less finding by Department of any clandestine removal of goods without assessment - Tribunal erred in upholding levy of penalty - Penalty set aside - Rules 9(2) and 52A of erstwhile Central Excise Rules, 1944 - Rule 4 of Central Excise Rules, 2002. [paras 28, 29]

Demand - No two assessment permissible for same period. [para 23]

*Appeals disposed off***CASES CITED**

- Duncans Agro Industries Ltd. v. Union of India — 1989 (39) E.L.T. 511 (Del.) — *Referred* [Para 8]
 Government of India v. Madras Rubber Factory — 1995 (77) E.L.T. 433 (S.C.) — *Referred* [Para 16]
 Hira Lal Hari Lal Bhagwati v. C.B.I. — 2003 (155) E.L.T. 433 (S.C.) — *Relied on*..... [Para 25]
 N.B. Sanjana v. Elphinstone Spinning and Weaving Mills Co. Ltd. — 1978 (2) E.L.T. (J 399) (S.C.) — *Relied on* [Para 28]
 Serai Kella Glass Works Pvt. Ltd. v. Collector — 1997 (91) E.L.T. 497 (S.C.) — *Referred*.... [Para 8]
 Union of India. v. Godrej & Boyce Mfg. Co. (Pvt.) Ltd. — Civil Appeal No. 12824 of 1989 — *Referred* [Para 22]

REPRESENTED BY :

S/Shri Joseph Vellapally, Sr. Advocate, U.A. Rana, Prashant Thakur, Raghvesh Singh and Ms. Srabonee Roy (for M/s. Gagrat & Co.), Advocates, with him for the Appellant.

S/Shri Mathai M. Paikeday, Sr. Advocate, Ms. Kiran

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Bhardwaj and B.K. Prasad, Advocates, with him for the Respondent.

[Judgment per : Ashok Bhan, J.] - These civil appeals are directed against the common impugned order Nos. 829 and 830 of 2000, dated 4-10-2000 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") in Appeal Nos. E/1622/99-A and E/2095/2000-A. Revenue has filed Civil Appeal Nos. 4075-4076 of 2001 against the deletion of duty demand of Rs. 17,67,13,315/- raised in the show cause notice dated 1-10-1986 for the period September 1981 to February 1983 and the assessee has filed Civil Appeal No. 754 of 2001 against the levy of penalty of Rs. One crore. Since these appeals are directed against the common order passed by the Tribunal, we also propose to dispose them of by a common order. The facts are common in both the sets of appeals.

2. This case has a chequered history and has had various round of litigation in different forums. In order to determine the controversy and the point involved in these appeals the following facts may be noticed.

3. M/s. National Tobacco Company Limited, Agarpara, a manufacturer of cigarettes falling under erstwhile Central Excise Tariff Item No. 4-II(2), and holder of Central Excise Licence L-4 No. 3/84 for the manufacture of cigarettes, was merged with M/s. Mirpara Tea Company effective from 1-4-1977. Consequent to this, it became a Division of newly formed M/s. Duncans Agro Industries Limited, Calcutta. Thereupon, Central Excise Licence L-4 No. 1-Cig/IV/78 dated 18-2-1978 for the manufacture of cigarettes was issued to M/s. National Tobacco Company.

4. In April 1984, M/s. National Tobacco Company was demerged from M/s. Duncans Agro Industries Limited and was made a wholly owned subsidiary of M/s. Duncans Agro Industries Limited in the name and style of M/s. New Tobacco Company. M/s. Duncans Agro Industries Limited, is the respondent in the two appeals filed by the Revenue and the appellant in Civil Appeal No. 754 of 2001 and would be referred to as the assessee.

5. As a result of demerger, a new Central Excise Licence No. L-4 No. 1/Cig/IV/Khar/85 dated 9-3-1985 was issued to M/s. New Tobacco Company Limited for the manufacture of cigarettes.

6. As there was some dispute as to whether excise was leviable on manufacturing cost plus manufacturing profit and post manufacturing cost and profits arising from post manufacturing operations, the provisional assessments were made from July, 1973 to February, 1983. Final assessments were to be made later. On 8-5-1984, Assistant Collector of Central Excise, Calcutta issued a show cause notice to the assessee for the period July, 1973 to February, 1983 calling upon the assessee to show cause as to why :

"...the deductions claimed on account of freight, interest on freight, rebate, octroi, interest on receivables and tariff rate of duty from the wholesale price should not be disallowed and why the charges on account of freight, interest on freight, rebate, octroi and interest on receivables should not be included in the assessable value and also why the cost of C.F.C. packing charged and realized by them from the buyers should not be included in the assessable value under Section 4(1)(a) and Section 4(4)(d)(i) of Central Excise & Salt Act, 1944 and why price of each product should not be approved accordingly."

7. Collector of Central Excise, Delhi issued another show cause notice on 1-10-1986 to the assessee for the period September, 1981 to February, 1983 alleging that the assessee has willfully mis-declared assessable value of cigarettes from time to time during the period from September, 1981 to February, 1983 in the Central Excise

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documents. Price Lists with fraudulent intent to evade the payment of correct amount of duty and thereby they have short paid Central Excise duty amounting to Rs. 97,55,56,362/-. Accordingly, the assessee was called upon to show cause as to why :

- "(a) the duty short paid amounting to Rs. 97,55,56,362.00 as per Annexure 'D' should not be demanded under Rule 9(2) of the Central Excise Rules, 1944 read with the proviso of sub-section (1) to Section 11A of the Central Excise and Salt Act, 1944.
- (b) Penalties should not be imposed on them under Rules 9(2), 52A(5), 210 & 226 of the Central Excise Rules, 1944."

8. Assessee being aggrieved filed a Civil Writ Petition No. 1708 of 1987 in the Delhi High Court on the ground that the show cause notice dated 1-10-1986 issued to the assessee alleging contravention of the central excise duty in respect of cigarettes manufactured and cleared from the factory at Agarpara during the period September, 1981 to February, 1983 and also addendum to the show cause notice dated 1-10-1986 was in excess of the jurisdiction and/or without authority of law inasmuch as the assessee had been paying the excise duty on the basis of the provisional assessments pursuant to filing of provisional price lists and till the price lists and the assessments were finalised a show cause notice could not be issued. According to the petitioner Section 11A of the Central Excises Salt Act, 1944 (for short "the Act") could not be invoked in cases where duties are paid under provisional assessment made under Rule 9B of the Central Excise Rules, 1944 (for short "the Rules") without first finalizing the assessment. The Division Bench of the High Court dismissed the writ petition by its order dated 12-8-1988 reported in *Duncans Agro Industries Ltd. v. Union of India & Ors.-1989 (39) E.L.T. 511* (Del.). Contention of the assessee that the cause of action for invoking Section 11A would accrue only from the relevant date defined under Section 11A which in case of provisional assessment means the date of adjustment of duty after final assessment under Rule 9B was rejected. This judgment became final and is binding between the parties. This Court later took a contrary view in *Serai Kella Glass Works Pvt. Ltd. v. Collector of Central Excise, Patna* [1997 (4) SCC 641].

9. Collector of Central Excise, Delhi took up for hearing the proceedings arising from the show cause notice dated 1-10-1986 and disposed of the same on 27-3-1991 with the interim directions, which are as under :

"I direct the Divisional Assistant Collector, Kharda Division of Calcutta-II Collectorate to make final assessment in the case under Rule 9B(5) of the Central Excise Rules, 1944, for the period covered by the instant show cause notice as early as possible. He may use the material contained in the instant show cause notice as independent material to support the final assessment after according an opportunity to the manufacturer/other parties concerned to meet the case and after considering the cause show. He is further directed to intimate the undersigned as soon as he completes the said provisional assessment. Thereafter this show cause notice will be taken up for adjudication."

10. In this order the Collector of Central Excise, Delhi gave three fold directions to the Divisional Assistant Collector, Kharda Division of Calcutta-II. namely, (1) To make final assessment in the case under Rule 9B(5) of the Rules for the period covered by the instant show cause notice (1-10-1986) as early as possible; (2) He could use the material contained in the show cause notice dated 1-10-1986 as independent material to support the final assessment after affording an opportunity to the manufacturer/other parties concerned to meet the case and after considering the show cause; (3) He was further directed to intimate the Collector of Central Excise, Delhi as soon as he completes the provisional assessment; and (4) The show cause notice dated 1-10-1986 was to be taken up for adjudication thereafter.

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11. The assessee being aggrieved filed an appeal before the Appellate Tribunal at New Delhi, which was disposed of on 9-12-1997. The assessee challenged the finding/observation made by the Collector of Central Excise, Delhi that "thereafter this show cause notice will be taken up for adjudication" on the ground that after finalising of the assessment there would be nothing left for the Collector of Central Excise, Delhi for consideration or decision and therefore, this sentence in the order should be set aside. The appeal was disposed of by observing :

"...We do not understand the impugned order as recording a finding overruling the contention raised by the appellant the collector had no jurisdiction to adjudicate on the strength of show cause notice dated 1-10-86 or as to whether after finalisation of assessments anything would be left for the Collector to decide. Thereafter the appellant cannot have any grievance. *It is open to the appellant to raise these aspects if after finalisation of assessment the Collector takes up the proceeding before him for adjudication in this matter.*

With this observation, the appeal is disposed of."

[Emphasis supplied]

12. Thus the liberty to take up this point was reserved with the assessee after the finalisation of the proceedings.

13. In pursuance to the interim directions issued by the Collector of Central Excise, Delhi in its order dated 27-3-1991 the office of the Assistant Collector Central Excise, Kharda Division, Calcutta issued addendum dated 20-2-1992 incorporating the contents of the show cause notice dated 1-10-1986 in the show cause notice dated 8-5-1984 thereby assuming jurisdiction to adjudicate all issues raised in both the show cause notices.

14. The two show cause notices were finally adjudicated by the Assistant Collector Central Excise, Kharda Division, Calcutta by its order dated 11-1-1996. The assessable value was determined and consequent thereupon demand was raised by finalizing assessments for the entire period from July, 1973 to February, 1983.

15. On 3-7-1996 show cause cum demand notice was issued by the Superintendent, Office of the Assistant Collector Central Excise, Kharda Division, Calcutta on the basis of adjudication order dated 11-1-1996 quantifying the amount of short levy for the period July, 1973 to February, 1983. Assistant Collector Central Excise, Kharda Division, Calcutta adjudicated the show cause cum demand notice dated 3-7-1996 confirming the demands (short levy of Rs. 386,45,71,192.69 and Rs. 66,45,136.19 in respect of cigarettes and smoking mixtures respectively.

16. The assessee being aggrieved against the order of Assistant Collector Central Excise, Kharda Division, Calcutta filed an appeal before the Commissioner (Appeals) Central Excise, Calcutta. Commissioner of Appeals by his order in appeal dated 25-7-1997 accepted the appeal and remanded the matter to the Assistant Collector Central Excise, Kharda Division, Calcutta for recomputation of the duty afresh in the light of the decision of this Court in *Government of India v. Madras Rubber Factory* [1995 (4) SCC 349]. Assistant Collector, Central Excise, Kharda Division, Calcutta in compliance of the order of remand dated 25-7-1997 of the Commissioner of Appeals Central Excise, Calcutta recomputed the amount of duty short paid as Rs. 16,6,94,320.34 and Rs. 8,13,683.29 after adjusting Rs. 5.97 crores pre-deposited in the light of the judgment of this Court in *Madras Rubber Factory's* case (supra). This order was later on corrected by issuing a corrigendum and the amount was reduced.

17. After finalization of the proceedings by the Assistant Collector Central Excise, Kharda Division, Calcutta the Commissioner of Central Excise, Delhi passed an

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order-in-original in show cause notice dated 1-10-1986 determining Rs. 17.67 crores as due as duty liability and imposing a penalty of Rs. One crore.

18. Assessee being aggrieved filed Appeal No. E/1622/99-A/92E/ 2095/2000-A, which has culminated in the impugned order. Tribunal accepted the appeal partly. Duty liability was set aside as it had already been adjudicated in the earlier proceedings but upheld the levy of penalty. While deleting the duty liability the Tribunal observed thus :

"From this, it is clear that the Collector had left the duty demand raised in the show cause notice dated 1-10-1986 also to be included in the finalisation of the provisional assessment which was pending from 1973. The Revenue had not challenged that order. Pursuant to that order, the Assistant Collector had issued an Addendum to the assessee on 20-2-1992 making the materials relied upon in the show cause notice dated 1-10-1986 as part of the materials for finalising the assessments and the duty demand was finalised after assessee made their representations. That duty demand became final as the Revenue did not challenge it. The order passed on the assessee's appeal against that duty demand was also not challenged by both sides. We, therefore, hold that the duty demand made by the Assistant Collector was a consolidated demand and that demand having become final, no second demand could be made in another adjudication proceeding by the Commissioner. Accordingly, we set aside the duty demand of over Rs. 17 crores made in the impugned order."

19. Revenue being aggrieved has filed Civil Appeal Nos. 4075-4076 of 2001 against the deletion of the duty liability and the assessee has filed the Civil Appeal No. 754 of 2001 against the order maintaining the levy of penalty.

20. Another fact which needs to be noticed is that after the Assistant Collector Central Excise, Kharda Division, Calcutta finalized the assessment order dated 3-12-1996, the Assistant Collector Central Excise, issued show cause notice dated 27-5-1998 stating therein that the order-in-original dated 12-12-1997 the extra amounts realised as "additional consideration" was not taken into consideration and accordingly a demand of Rs. 21.58 crores was made on the assessee. In the meantime, Kar Vivad Samadhan Scheme, 1998 (for short "the KVS Scheme") was introduced by Finance (No. 2) Act, 1998. Pursuant to the said scheme the assessee filed a declaration under Section 89 of the Finance (No. 2) Act, 1998 in respect of the KVS Scheme. An order under the KVS Scheme was passed in pursuance to which the assessee paid the demand raised under the said scheme.

21. Counsel for the parties have been heard at great length.

22. The issue before the Assistant Collector Central Excise, Kharda Division, Calcutta was for the determination of the assessable value of the goods for the period July, 1973 to February, 1983 i.e. the period covered by the show cause notice dated 8-5-1984. The issue before the Commissioner of Central Excise, Delhi was also for determination of the assessable value of the goods for the period September, 1981 to February, 1983, the period covered by show cause notice dated 1-10-1986. The show cause notice dated 1-10-1986 was issued against 20 persons including the assessee company. As regards the assessee, for the period September, 1981 to February, 1983, the Commissioner of Central Excise passed the order dated 27-3-1991 directing the Assistant Commissioner to determine the assessable value taking into consideration the materials contained in show cause notice dated 1-10-1986. This he did by noticing the correct position of law laid down by this Court in the case of *Union of India v. Godrej & Boyce Mfg. Co. (Pvt.) Ltd.*, (Civil Appeal No. 12824 of 1989 decided on 8-3-90). The Assistant Collector Central Excise, Kharda Division, Calcutta thereafter issued addendum dated 20-2-1992 incorporating the allegations made in show cause notice dated 1-10-1986 in the show-cause notice dated 8-5-1984. The effect of the order

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passed by the Commissioner of Central Excise, Delhi was that the Assistant Collector Central Excise, Kharda Division, Calcutta alone had the jurisdiction to finally adjudicate and determine the assessable value of the goods cleared from the assessee's factory for the entire period and the consequent duty liability. Either party wishing to dispute the determination made by the Assistant Collector Central Excise, Kharda Division, Calcutta had to do so by invoking the right of appeal to the Commissioner of Appeals, Tribunal and the Supreme Court. In addition the Department could have invoked the short levy provision under Section 11A within a period of six months or invoked the extended period of limitation of 5 years under proviso to Section 11A provided the conditions laid down in the proviso were satisfied. The two show cause notices were finally adjudicated by the Assistant Collector Central Excise, Kharda Division, Calcutta on 11-1-1996. The assessable value determined and consequent demand was raised by finalizing assessments for the entire period July, 1973 to February, 1983. If the revenue was aggrieved by the above proceedings it was incumbent upon them to either invoke the right of appeal against that order under Section 35E(2) or issue a short levy notice under Section 11A within six months. Neither of these two options having been invoked, the order attained finality as against the revenue.

23. It need not be emphasized that there could not be two assessments for the same period.

24. This apart finally determined as due for the entire period of 10 years from the assessee having been settled under the Kar Vivad Samadhan Scheme, 1998, there is no scope for any further review or determination of that issue by any authority under the Act.

25. In *Hira Lal Hari Lal Bhagwati v. CBI*. [2003 (5) SCC 257], at page 274 this Court observed :

"We have carefully gone through the Kar Vivad Samadhan Scheme, 1998 and the certificate issued by the Customs Authorities. In our opinion, the GCS is immune from any criminal proceedings pursuant to the certificates issued under the said Scheme and the appellants are being prosecuted in their capacity as office-bearers of the GCS. As the customs duty has already been paid, the Central Government has not suffered any financial loss. Moreover, as per the Kar Vivad Samadhan Scheme, 1998, whoever is granted the benefit under the said Scheme is granted immunity from prosecution from any offence under the Customs Act, 1962 including the offence of evasion of duty. In the circumstances, the complaint filed against the appellants is unsustainable."

And at page 280 it was observed :

"The Kar Vivad Samadhan Scheme certificate along with *CBI v. Duncans Agro Industries Ltd.* - 1996 (5) SCC 591, and *Sushila Rani v. C.I.T.* - 2002 (2) SCC 697, judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process."

26. Thus, after the grant of certificate under the Kar Vivad Samadhan Scheme, 1998 as having settled the dispute and payment of the amount determined no further proceedings could be initiated or proceeded with for the period in question.

27. For the reasons stated above, we do not find any substance in the appeals filed by the Revenue. Accordingly, Civil Appeal Nos. 4075-4076 of 2001 are dismissed and the order passed by the Tribunal in this respect is affirmed.

28. Taking up the appeal of the assessee, it may be noted that the proposed